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November 15, 2001

The Honorable Richard A. Meserve
Chairman
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Chairman:

Thank you for your letter of October 16, 2001, responding to my letter of September 20, 2001 regarding the terrorist threat to nuclear facilities. I am writing to follow-up on several issues raised by your response, and to seek additional information and clarifications regarding the nature and adequacy of actions undertaken by the Commission and the industry to upgrade security at nuclear plants.

As you know, on October 31, 2001, the House Energy and Commerce Committee approved an amendment that I, along with Chairman Tauzin and Ranking Democratic Member Dingell offered to H.R. 2983, the Price-Anderson Reauthorization Act. This amendment would require the President to undertake an immediate assessment of what aspects of the defense of nuclear facilities should be the responsibility of the federal government, and what aspects should be the responsibility of the Commission and its licensees. The amendment requires the Commission to undertake a mandatory rulemaking to upgrade its rules relating to the design basis threat, to issue new rules to strengthen the security of radioactive materials transportation, and codifies into the Atomic Energy Act of 1954 a requirement for an Operation Safeguards Response Evaluation (OSRE) program. I urge the Commission to review this amendment carefully and drop its opposition to immediate enactment of legislation requiring an NRC rulemaking on the DBT and transportation security, such as that articulated in your October 5, 2001 letter to Chairman Tauzin.

As the Congress proceeds to take up this legislation, there are a number of questions raised by your most recent letter that I would like to have answered in order to better understand the nature and adequacy of the Commission's and licensee's responses to the current terrorist threat and the impact of the pending amendment on those activities. I therefore would appreciate your assistance and cooperation in providing responses to the following questions:

Questions on the NRC's Immediate Response to the Events of September 11

- 1) Please provide me with copies of the Threat Advisory issued to licensees on September 11, 2001 and the Safeguards Advisory issued to licensees on October 6, 2001. Please also provide me with copies of any Confirmatory Action Letters sent to licensees. Should any of these documents be nonpublic, please advise your staff to make appropriate arrangements with my staff for transmittal and safekeeping of these documents.
- 2) In your October 16th letter, you advised me that the Commission had decided to issue a Threat Advisory on September 11th rather than an order because issuing an order "would have consumed time and resources and would have been no more effective in achieving the desired result."
 - a) Please explain why issuance of an order would have been more time and resource consuming.
 - b) Does the Commission believe that any changes in its procedures for issuing orders may be needed in order to assure that such orders can be issued rapidly to respond to emergency situations?
 - c) From a legal and enforcement standpoint, what is the difference between a Threat Advisory and an Order? In your response, please address the consequences of noncompliance by a licensee. Can licensees be fined or otherwise penalized if they fail to implement the heightened security measures asked for in an advisory? If not, wouldn't issuance of an order be more appropriate, in order to signal to licensees that full compliance is expected?
- 3) On September 28, 2001, you sent a memo to the NRC's Executive Director for Operations directing the NRC staff to undertake a comprehensive reassessment of the Commission's security requirements. Please report on what specific actions have been proposed or undertaken in response to that request.
- 4) In your October 16th letter, you indicated that "all relevant licensees" have implemented a heightened security posture and that "all relevant licensees" remain at an elevated security posture. Please inform me what the Commission means by "relevant licensees." Does this term include all production and utilization facilities, including research reactors and decommissioned reactors and all materials licensees, or are some excluded? If so, please explain the rationale underlying the Commission's decision to include certain licensees, but not others.
- 5) In your October 16, 2001 letter, you indicated that "The NRC has routinely monitored the threat environment since the creation of the design basis threat (DBT) statements in the late 1970s." How many times has the DBT been changed since the first DBT rule was enacted? What specific changes were made in the DBT on each of these occasions, and how did these changes differ in the final rule from those originally put forward in the proposed rule?

- 6) I have received your November 13, 2001 letter regarding the temporary shutdown of the NRC website, and appreciate your updating me regarding the current status of efforts to review materials that had been posted on the site, as well as your consideration of the concerns raised in that letter. As I indicated in my letter of October 15th, I would like a list of all materials removed from the web site since September 11, 2001 and an explanation of the basis for the removal of such materials. Please provide such as list as soon as the NRC staff completes its review of the Web Site.
- 7) On September 12, 2001, in a document entitled "NRC Staff Responses to Contentions Submitted by Donald Moniak et al" in NRC docket number 070-03909, the Duke Cogema Stone & Webster MOX Fuel Fabrication Facility Construction Authorization Request, NRC stated that "GANE [petitioners] provides no support for its general assertion that 'malevolent acts must be analyzed as a foreseeable environmental impact under NEPA . . . and GANE does not establish that terrorist acts (involving the proposed MOX Facility or related materials) fall within the realm of 'reasonably foreseeable' events.'" Does the NRC intend to amend this filing, in light of the events of September 11? If not, why not?

Questions on Background Checks Required by Employees of Nuclear Facilities

- 1) Your October 16 letter stated that the background checks required for personnel at nuclear facilities is limited to a check of criminal history, psychological history, training/education, and other behavioral observations. However, you apparently do not require that the background of the individual be checked to ensure that he or she is not a member of a domestic or foreign group that seeks to do harm to the U.S. Do you plan to require this sort of security background check of all current and future employees, in light of the events of September 11? If not, why not, given the possibility that Al Queda or other groups could seek to place one of their U.S.-based members at a job inside a nuclear reactor to assist as an insider in a future terrorist attack on the facility?
- 2) Your letter also indicates that since September 11th, the FBI has provided the NRC with frequently updated lists of individuals who may have ties or information related to terrorist activities and that, to date, all potential matches had been resolved through the FBI. Were there any positive matches? How many and at what plants? What action was taken?
- 3) Your letter also indicated that "employees at nuclear power plants do not have to be permanent residents or citizens of the United States." How many of those currently employed at the plants are foreign nationals? What countries are they from? How does the NRC assure that such individuals are properly screened to assure that they do not pose a risk to the security of the facilities due to any associations with any terrorist organizations?

Questions on the Adequacy of Security Forces at Nuclear Facilities

- 1) It has been suggested to me that over the last decade, some NRC licensees have significantly reduced their expenditures on security, as well as the number of security personnel at their facilities, resulting in a weakening of security at these facilities. Please provide me with a table listing the total annual security expenditures for each commercial nuclear power plant regulated by the Commission for each of the last 10 years, and the total number of armed security employees employed at such facility during each of the last ten years with responsibilities to respond to attacks. In this table, also provide a column indicating the percentage increase or decrease in security expenditures and numbers of security personnel at each facility during this ten-year period.
- 2) Is there any variation in the numbers of armed security employees deployed at each plant during periods of "heightened alert," such as those that have followed the events of September 11th? If not, why not, since presumably a period of heightened alert would necessitate an increased number of armed responders?
- 3) Does the Commission believe the numbers of persons employed by licensees to protect the plants is adequate in light of the number of terrorists involved in the September 11th attacks, and the potential for similar numbers of terrorists to be involved in a future attack against a nuclear power plant?
- 4) Which plant or plants currently deploys the most armed responders? Which plant or plants currently deploys the fewest armed responders? What security rationale justifies these differences, if any?

Questions on Force-on-Force Operational Safeguards Response Evaluations at Nuclear Facilities

As you know, the Operational Safeguards Readiness Evaluation (OSRE) program began testing nuclear plant security in 1991 with force-on-force exercises. Since that time, the NRC has conducted OSREs at approximately eight plant sites annually. In FY02, the NRC reduced the number of OSREs scheduled down to six, reportedly to free up resources to evaluate the pilot of the industry's Safeguards Performance Assessment (SPA) program. The OSREs provided the NRC with invaluable insights into actual security performance, identifying vulnerabilities and protective strategy faults that could not be otherwise identified. More importantly, OSREs identified problems that might not otherwise have been identified and corrected. **However, during a public meeting at the NRC on October 10, 2001, NRC employee Alan Madison stated that the next OSRE had been cancelled and future OSREs deferred.**

- 1) Why did NRC choose to cancel the next OSRE and defer future OSREs? Don't you believe that the events of September 11th demonstrate the need for ADDITIONAL strengthened OSREs? Doesn't the cancellation of the OSREs mean that security problems are no longer being identified and fixed, leading to an overall reduction in security at nuclear facilities?
- 2) On September 11, 2001 the NRC placed nuclear facilities on their highest level of security preparedness. Have any of the dozens of OSREs conducted since 1991 been conducted with the nuclear plant at the highest level of security preparedness? If not, how can the NRC be assured that security performance at this level is better than at lower levels of preparedness?
- 3) Has the Nuclear Energy Institute's (NEI) guidance for the proposed industry-designed SPA pilot program been approved by the NRC? If not, when will such approval be forthcoming? Will there be sufficient time for NRC staff, inspectors and contractors to familiarize themselves with the final guidance before the pilot program commences so that they can assess the program effectively?
- 4) Under the SPA program, will NRC evaluate the performance of pilot plants during the evaluated exercise and require immediate correction of any identified security vulnerabilities, or will it confine itself to evaluating only how the exercise is conducted and evaluated by the licensee? How will the public have confidence that adequate security will be maintained at these plants during the pilot?
- 5) Under the proposed Temporary Instruction for NRC observation of the SPA pilot program, NRC will not be able to participate actively in tabletop drills and will not be able to choose scenarios for force-on-force testing, which is a departure from the current practice under OSRE. Under these restrictions, how will NRC be able to independently assess whether the licensees' evaluated exercises are sufficiently challenging and are aimed at potential weaknesses in protective strategies, rather than known strengths?
- 6) The NRC has stated that it envisions the SPA pilot program will serve as a test bed for concepts that may be incorporated into the revision of 10 CFR §73.55. NRC's proposed revision includes an expansion of performance testing to incorporate plant operating modes other than full power, as well as targets such as spent fuel storage areas. How will NRC ensure that these concepts are tested in the SPA pilot?
- 7) I understand the NRC's position to be that the OSRE program will continue until a new rulemaking is in place that establishes a requirement for performance tests. Such a rulemaking is likely to take several years. Is it your intention to support the OSRE program at the current rate --- 6 per year --- until a new rule is in place?

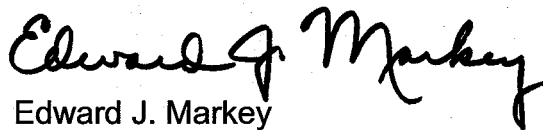
- 8) In your October 16, 2001 letter you stated that the NRC has not made a decision to terminate the OSRE program yet, but instead planned on evaluating the results of the industry-sponsored SPA program, in which the industry would test its own security measures, before deciding how to proceed. Why should the Congress or the public have any confidence that industry-designed, supervised, and evaluated tests of its own security systems are adequate? In the aftermath of the September 11th attacks, don't you agree that tests of a licensee's security forces should be a federal function, rather than a function delegated to the licensees themselves? If not, why not?
- 9) I understand that, as written, the SPA does not permit NRC "observers" to independently assess potential security weaknesses, as in the OSRE. The OSRE permits/requires NRC inspectors to tour the plant, question insiders at great length, conduct analytic tabletop drills. In contrast, the SPA, as designed and written by the nuclear industry, appears to provide a carefully choreographed and rehearsed demonstration of what the particular plant would want to demonstrate.
 - a) Don't you think that there is an inherent conflict-of-interest in asking the nuclear industry to test itself on power plant security?
 - b) Rather than replace the OSRE program with such a flawed program, wouldn't it be preferable to step up the number of OSRE tests, so that they occurred at least every 2-3 years instead of once every 8 years? If not, why not?
- 10) In the past, the Commission has provided information to me indicating that the nuclear industry's track record in OSREs has not been satisfactory. Is it not true that the NRC has found potential vulnerabilities in OSRE tests of licensees that could lead to core damage or a radioactive release, in 40-50% of all OSREs in recent years?
- 11) What criteria does the NRC use to determine whether a licensee's armed responders have passed or failed an OSRE test? If a licensee whose armed responders have, in an OSRE test, proven unable to protect the plant against an act of sabotage resulting in a core meltdown or radiological release, is this a failure, or is it possible to pass despite this result?
- 12) Please provide a summary of the results of each OSRE test conducted since the inception of this program. This summary should include the following information: Plant tested, security company contracted by the plant at the time of the test, date of test, summary of results of tests (including, but not limited to identification of any security weaknesses identified in the test and the root causes of such weaknesses), and actions taken (if any) by the licensee in response to weakness identified in the test.

Questions on Security Measures Taken at Nuclear Facilities in Other Countries

- 1) Several press reports have stated that French and Canadian authorities have decided to place anti-aircraft weaponry at some or all of their nuclear facilities. What does the NRC recommend regarding taking the same measures in the U.S.? Does the NRC feel that the actions taken by France and Canada are unnecessary? Why is it that National Guard units are currently deployed at some plants and not at others? Shouldn't there be a uniform national policy on this matter – particularly in periods of heightened alert?
- 2) In your October 16, 2001 letter to me, you stated that "The Commission believes that the baseline security level at U.S. commercial nuclear reactors is very high compared with most other nations" and that "We are aware of no other regulator who systematically carries out security inspections involving force-on-force exercises." Has the Commission considered expanding its international programs with foreign nuclear regulatory authorities to include programs to enhance security at foreign nuclear facilities, particularly in light of the recent warning by the International Atomic Energy Agency (IAEA) regarding the heightened threat to nuclear facilities worldwide? If not, why not. If so, what are you planning?
- 3) In your October 16, 2001 letter to me, you state that the Swiss nuclear authorities have required that "nuclear power stations shall be protected against the consequences of an airplane crash" and that these guidelines are intended to insure that in the event of an airplane crash, "the radiation exposure of the public shall not exceed the limits specified."
 - a) What design features have been required as a result of these guidelines?
 - b) Is the Commission aware of any other nations that have similar requirements? Please compare the Swiss, and any similar requirements in other nations, to the Commission's requirements for domestic licensees with respect to the protection of nuclear power plants against airline crashes?

Thank you for your assistance and cooperation in responding to this request. Should you have any questions about this inquiry, please have your staff contact Mr. Jeffrey S. Duncan or Dr. Michal Freedhoff of my staff at 202-225-2836.

Sincerely,



Edward J. Markey
Member of Congress